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Subject: WLO News for April 22, 2010



## WLO News for April 22, 2010

BNA, Inc.

Daily Environment

REPORT

HIGHLIGHTS

*Climate Change*  
**Immigration Reform Could Delay Climate Legislation This Year, Democratic Aides Say**  
Congressional leaders this week discussed the prospect of moving up Senate debate on immigration reform, aides said April 21, further complicating prospects for Senate climate and energy legislation that is only days away from release....

*Climate Change*  
**Voinovich Drafts Amendment to Preempt State, EPA Rules on Greenhouse Emissions**  
Sen. George V. Voinovich (R-Ohio) said April 21 that he would only support a climate change bill if it includes his amendment preempting efforts to regulate greenhouse gases under state or local law or through any federal policy outside of climate...

*EPA*  
**Obama Taps Illinois Litigator Susan Hedman To Direct EPA Region 5 Office in Chicago**  
CHICAGO President Obama has chosen Susan Hedman, a veteran litigator in the Office of the Illinois Attorney General who has extensive experience in environmental law and policy, to be the Environmental Protection Agency's Region...

*Great Lakes*  
**Report Shows Canadian Companies Release More Cancer-Causing Emissions Than U.S.**  
OTTAWA Canadian companies in the Great Lakes Basin reported greater releases of cancer-causing pollutants into the air in 2007 than companies in the United States, Theresa McClenaghan, executive director of the Canadian Environmental...

*Water Pollution*  
**Oberstar Introduces Legislation to Clarify Federal Jurisdiction Over Nation's Waters**  
Rep. James Oberstar (D-Minn.) introduced legislation April 21 that would amend the Clean Water Act to clarify and "reaffirm" U.S. jurisdiction over waters of the United States, including wetlands....



Inside EPA **Weekly Report**, 4/23/10  
[http://www.insideepa.com/secure/epa\\_nletters.asp?NLN=INSIDEEPA&ACTION=current](http://www.insideepa.com/secure/epa_nletters.asp?NLN=INSIDEEPA&ACTION=current)

**House Bill On Water Act's Scope Emerges As Election Test For Both Sides**  
Just-introduced House legislation to clarify the scope of the Clean Water Act (CWA) in the wake of several high court rulings on the issue is emerging as a likely election-year test for Democrats and Republicans, with lawmakers from each party blasting their opposing numbers and signaling that the bill is unlikely to move beyond a symbolic vote.

**EPA Union Cites Uneven Enforcement Efforts To Seek Workforce Study**  
EPA union officials are voicing concerns about uneven levels of enforcement across the agency's regional offices as they urge key House and Senate appropriators to include language in EPA's fiscal year 2011 spending bill to mandate an agency-wide workforce analysis to determine staffing needs for enforcement, climate and other work.  
**The Inside Story**

**Frightening Fracking?**  
A natural gas well in northwest Louisiana that has leaked methane, contaminating a drinking water well and leading to the evacuation of 135 local families, has drawn new attention to the health hazards associated with natural gas drilling, which has received increasing scrutiny from EPA, environmentalists and lawmakers.



<http://www.greenwire.com>

## MINING: Obama admin, western Dems lock horns over cleanup bill (04/22/2010)

Patrick Reis, E&E reporter

The Obama administration yesterday criticized legislation from top Western Democrats that would allow states to use revenue from a coal tax to clean up abandoned hardrock mining sites.

Both sides are grappling over the proper use of the Abandoned Mine Lands fund, a pool of cleanup funding that has been fed by a per-unit production tax on coal revenue since Congress passed the Surface Mining Control and Reclamation Act in 1977.

Energy and Natural Resources Chairman Jeff Bingaman (D-N.M.) is pushing legislation (**S. 2830**) to guarantee states' right to use the fund for cleanup of former copper, gold and uranium mining sites.

But Glenda Owens, deputy director of the Interior Department's Office of Surface Mining and Reclamation, said the proposal runs contrary to Congress' original intentions and should be used for coal only. Instead of seeking funds from the coal tax, Congress should consider legislation that would tax hardrock mineral mining to create a similar cleanup fund, Owens said.

"While we recognize the dangers that abandoned hard rock mines can pose ... the challenging economic conditions, coupled with this administration's commitment to fiscal responsibility, only heighten the need for Abandoned Mine Lands funds to be devoted to the highest priority coal problems," Owens told the Public Lands and Forests Subcommittee yesterday.

Owens' coal-only interpretation is consistent with the one reached by the Bush administration after Congress brokered a new revenue-sharing deal for the abandoned mine fund in 2006, but it is unlikely to win the administration any friends out West.

Bingaman said he would continue moving his bill forward, claiming it merely restores a funding arrangement that was in place for nearly three decades.

"In 2006, in the Bush administration, there was this very narrow, constrained legal interpretation of the law that limited how the SMCRA funding could be used and changed how it had been being used since 1977," said Bingaman spokesman Bill Wicker. "We think that previous interpretation was pretty unfortunate, and it has not been reversed. This bill fixes that."

Bingaman's bill is co-sponsored by Senate Democrats Mark Udall and Michael Bennet of Colorado and Tom Udall of New Mexico, as well as Utah Republicans Orrin Hatch and Robert Bennett.

Given the health risks posed by unchecked hardrock mining pollution, "the Interior Department should be helping us clean them up, not erecting more obstacles," Mark Udall said.

Hardrock reform legislation this session is unlikely given that Senate Majority Leader Harry Reid (D-Nev.) last month said the Senate would not have time to address the issue this session (*Greenwire*, March 15).

The Obama administration is also calling on Congress to cut off abandoned mine land funds to the four states -- Wyoming, Montana, Louisiana and Texas -- and three tribes -- the Crow, Hopi and Navajo -- that are federally "certified" to have no more high-priority, pre-1977 cleanup sites within their territories.

The administration estimates the legislation would shave more than \$100 million off next year's federal deficit, but the proposal has been equally unpopular in Congress.

Sen. John Barrasso (R-Wyo.), whose state leads the nation in coal production and makes the largest contribution to the abandoned mine fund, yesterday criticized the administration for "taking money we are owed."

House Natural Resources Chairman Nick Rahall (D-W.Va.), whose state has one of the highest counts of abandoned coal mines, said in February he had no interest in attempting to renegotiate the 2006 revenue sharing deal.

## WATER: Fight brewing over bill to cover all U.S. waters under Clean Water Act (04/21/2010)

Paul Quinlan, E&E reporter

Republicans assailed the bill Rep. James Oberstar (D-Minn.) introduced today to ensure Clean Water Act jurisdiction over all U.S. waters as a heavy-handed expansion of the 1972 pollution law that would prolong economic recovery.

The backlash portends a tough fight ahead to bring the bill to the House floor by September, Oberstar's stated goal, much less shepherd it through the Transportation and Infrastructure Committee he chairs.

Despite new provisions in Oberstar's bill that supporters described as significant concessions, Republican leaders of the committee cast the measure as a broad and untimely expansion of the federal regulatory authority, given the still-faltering economy.

"This massive federal jurisdiction grab will have significant negative repercussions on the nation's struggling economy," T&I Committee ranking member John Mica (R-Fla.) said in a statement. "The added confusion, delays, and endless litigation created by this bill will heap new costs on American agriculture, manufacturing, housing and other businesses, and our already grim unemployment picture will worsen."

The bill represents the fifth try in the House to drop the word "navigable" from the Clean Water Act so as to secure pollution protections for all rivers, streams and wetlands, regardless of their size, because of the effect that even those smaller water bodies can have on drinking water and wildlife habitat. Past measures have run into heavy opposition from Republicans and some farm-state and Western Democrats.

Litigation over what waters should be deemed "navigable," and thus under Clean Water Act jurisdiction, has caused a logjam that has forced regulators to delay or drop hundreds of investigations as pollution rates have risen. The confusion stems from two Supreme Court decisions in 2001 and 2006 -- *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* and *Rapanos v. United States* -- whose strict interpretation of the law Oberstar's bill seeks to undo. Subsequent U.S. Army Corps of Engineers and U.S. EPA rulings under the George W. Bush administration further rolled back protections, supporters of the proposed law say.

"The bill is simple: It makes perfectly clear what the Congress intended in 1972," Oberstar told reporters today.

Five Republicans from the House Natural Resources Committee, including ranking member Doc Hastings (R-Wash.) and Water and Power Subcommittee ranking member Tom McClintock (R-Calif.) also sounded off today, saying the bill would bring "nearly every body of water -- from irrigation canals, small ponds to seasonal mud puddles -- under the unlimited jurisdiction of the federal government."

Among the changes in Oberstar's bill from pervious attempts to drop the word "navigable" from the law: the deletion of language that suggested any "activities" -- as opposed to just "discharges" -- would be regulated, the exemption of wastewater treatment systems and parameters to allow for new treatment systems, and the exemption for "prior converted croplands" or farmlands converted from wetlands.

Some Democrats and Republicans who have raised concerns about previous iterations of the bill declined to comment, citing their ongoing review of the proposed law. But a Republican legislative aide who asked not to be named called Oberstar's argument that the Clean Water Act was meant to encompass all water bodies "revisionist history" and said language in the bill created a veritable "litigation toolbox" for environmental groups to sue what they deem to be polluting industries.

Despite the concessions, "they giveth, but they taketh a lot away," the GOP aide said. "This thing is pretty open for broad interpretation, still."

**OIL AND GAS: Pa. case shows need for federal fracking oversight -- Sen. Casey (04/21/2010)**[http://adserver.eenews.net/www/delivery/ck.php?oaparams=2\\_bannerid=698\\_zoneid=87\\_source=click to\\_cb=4ac9b2b1fd\\_oadest=http://www.eenews.net/trial](http://adserver.eenews.net/www/delivery/ck.php?oaparams=2_bannerid=698_zoneid=87_source=click%20to_cb=4ac9b2b1fd_oadest=http://www.eenews.net/trial)  
**Mike Soraghan, E&E reporter**

Sen. Bob Casey of Pennsylvania is questioning whether his state's regulators have been tough enough on an oil and gas driller that rapidly developed a record for environmental troubles.

Casey, a Democrat, is the lead Senate sponsor of a bill that would force U.S. EPA to regulate a drilling practice called "hydraulic fracturing," or fracking, which is now overseen solely by states. Industry groups are fiercely opposed to the bill.

"We need to start being more determined about how we deliver accountability and look at whether state regulation is enough," Casey said in a brief interview yesterday.

Residents of Dimock, which is near Scranton in the northeast corner of Pennsylvania, say drilling by Cabot Oil & Gas Corp. has contaminated their water with toxic chemicals, caused sickness and reduced property values.

Last week, the Pennsylvania Department of Environmental Protection fined Cabot \$240,000 and ordered it to permanently shut down three gas wells. Regulators said the company did not follow a November 2009 order to repair well casings that discharged natural gas into groundwater, contaminating the drinking water of 14 homes (*Greenwire*, April 19).

State DEP Secretary John Hanger called it the "most aggressive" action taken against any company drilling in the Marcellus Shale. But Casey is not rushing to agree.

"I'm not sure they've come down hard enough," Casey said.

Casey's legislation would subject fracturing to federal Safe Drinking Water Act requirements and require disclosure of the chemicals that drillers inject underground.

Environmental groups and other backers say the scrutiny is needed to protect human health, but industry says it would jeopardize the nation's energy supplies. The bill has not moved out of committee, but EPA and the House Energy and Commerce Committee are studying the environmental effects of fracking.

Fracking involves injecting chemicals, sometimes toxic, and tanker-loads of water into wellbores at high pressure to pry loose gas from rock. In conventional drilling, it allows companies to produce more oil or gas from wells. But it is essential to getting any gas out of shale formations like the Marcellus in Pennsylvania, which have dramatically expanded the nation's reserves of gas.

Drillers have fractured wells for decades, but as shale gas production has moved from Texas to the Northeast, concern has grown among neighbors of the drilling sites that the chemicals in the injections could contaminate groundwater.

Industry officials say those concerns are misplaced and say fracturing has never been proved to have contaminated groundwater.

Several major oil companies have proposed adding language to the climate bill being drafted in the Senate that would take a stand against federal regulation of fracturing (*E&E Daily*, March 24). Casey, considered a swing vote on the bill, said he would dislike such a proposal.

"If they continue, they will make me mad," Casey said. "That's not helpful when they need a vote here and there."

State officials stress that in the Cabot case, the problems were not caused by fracturing.

Instead, they have accused Cabot of allowing gas to migrate because they failed to properly encase the wellbore in concrete.

State officials disagree with Casey's contention that they have been too lenient, and they say Pennsylvania has the tools it needs to protect the state's environment.

"This order is very comprehensive, multi-tiered and unprecedented," DEP spokesman Neil Weaver said. "The implications to the company could be drastic. If they do not comply, they could be ordered to plug up to 14 of these wells."

Weaver added, "Secretary Hanger would be more than willing to sit down and talk with Senator Casey about what we're doing and how we're moving forward."

Cabot could not be reached for comment. A spokesman for an industry group formed to fight federal regulation of fracturing said the Cabot situation demonstrates the effectiveness of state regulation.

"Specific to that individual operator, DEP has investigated the issues, diagnosed the problems, reported its findings, posted and collected separate fines, and temporarily suspended operations pending updates to the company's statewide development plan," said Chris Tucker, spokesman for the group Energy In Depth.

"If Senator Casey's trying to make the case that DEP's asleep at the switch, and that EPA bureaucrats sitting six hours away in D.C. would've handled this case better, he probably picked the wrong example here," Tucker said.

**NATURAL GAS: Leak in La. contaminates water, forces evacuation (04/21/2010)**

A gas leak that seeped into drinking water has forced the evacuation of hundreds of people from their homes in northwest Louisiana.

At least 135 homes were evacuated just south of Shreveport on Monday and Tuesday, with residents being told they could not return until today at the earliest.

A well being drilled to access the Haynesville Shale struck a shallow pocket and began spewing gas into the air. Gas was later found in a freshwater aquifer that supplies drinking water. Subsequent tests showed high levels of gas in dozens of water wells, with some concentrated at rates that could cause an explosion. Exco Resources Inc., which was in charge of the drilling, immediately notified authorities.

The evacuation is voluntary, but residents who chose to stay are being barred from using their water.

The contamination is not definitely linked to Exco drilling, but it is centered on the drill site (Ben Casselman, *Wall Street Journal* [subscription required], April 21). -- **JP**

**DRINKING WATER: EPA's inspector general finds no need to tighten perchlorate standard**

U.S. EPA should assess the cumulative health effects of perchlorate exposure rather than a single chemical-risk approach, the agency's inspector general said yesterday.

But tightening what EPA has deemed a safe concentration of perchlorate in drinking water from 24.6 parts per billion to 6 ppb -- the level set by California regulators -- would not provide "a meaningful opportunity to lower the public's risk," the IG report concludes.

Perchlorate is a component of rocket fuel and fireworks that also occurs naturally. It has been found in leafy vegetables and fruit, breast milk and infant formula. Environmentalists have long sought to regulate perchlorate in drinking water because the compound has been known to inhibit the thyroid's iodine uptake and interfere with fetal development at high doses. In the absence of federal action, several states including California have moved forward.

Industry groups argue that exposure to perchlorate at low levels is not harmful and that widespread perchlorate contamination has just come to light because of enhanced technologies capable of detecting perchlorate at minute levels.

EPA announced last year that it would review perchlorate research. During the George W. Bush administration, the agency in 2008 said it would delay its final decision on perchlorate regulation until the National Academy of Sciences studies the matter, but the Obama administration has opted to review past agency decisions on the compound.

A draft of the IG report last year came under fire from environmentalists and public health experts for failing to justify its support of the more liberal drinking water standard.

"Although OIG's use of a cumulative effect approach may have merit, it is inappropriately used to argue against a protective drinking water value for perchlorate," Massachusetts Environmental Protection Department officials wrote. "From a public health perspective and desire to protect children's health, exposures to multiple thyroid toxicants should lower the acceptable exposure value for any single toxicant not the other way around" (*Greenwire*, May 15, 2009).

The inspector general said there are several other chemicals that also stress the thyroid's ability to uptake iodide, including a lack of iodide. Because of this, the report said, the most effective way to combat the long-term problems associated with iodide-deficiency would be to require that all prenatal vitamins have iodide added and to encourage women to take them during pregnancy and while nursing.

"[L]imiting perchlorate exposure does not effectively address this public health issue," the inspector general said.

**Click here** to read the report.

**WYOMING:** Sen. John Barrasso (R-Wyo.) has sent a letter to the U.S. Army Corps of Engineers asking to step up efforts to remove trichloroethylene (TCE) from one of Cheyenne's main sources of drinking water. The chemical leaked into groundwater from an abandoned nuclear missile site 18 miles west of the city. The agency has proposed spending \$5.2 million on a facility at the city's treatment plant that would reduce TCE levels to 2 parts per billion, but Barrasso asked to make the chemical undetectable in the water (Mead Gruver, *AP/Casper [Wyo.] Star-Tribune*, April 21).

**ClimateWire -- Thu., April 22, 2010 -- Read the full edition**  
**1. BUSINESS: Branson's 'Carbon War Room' puts industry on front line of U.S. climate debate**

Richard Branson, the British-born billionaire, equates global warming with the kind of threat posed by a world war. In a capitalist America, he argues, that means deploying private equity and ingenuity to beat a common enemy -- in this case, carbon emissions. A serial entrepreneur, Branson has become as famous for the success of Virgin Records and Virgin Atlantic Airways as for his stabs at addressing vexing environmental and public health issues. His latest venture, the "Carbon War Room," has kept a low profile as it sells to venture capitalists, private equity investors and U.S. industrial giants the idea that cutting greenhouse gas emissions can drive long- and short-term profits.

- 2. LEGISLATION: States and parties jockey for position on pre-emption issue**
- 3. CALIFORNIA: Climate regulators question rosy economic estimates**
- 4. HEALTH: U.S. and other industrial nations already feel impacts of climate change -- report**
- 5. WIND: Interior kick-starts Del. offshore leasing**
- 6. RISK: Climate responses fail to find footing in flood bill**
- 7. ENVIRONMENT: Architects view emissions and waste as 'design problems'**
- 8. PHILANTHROPY: Christie's launches a 'green auction' for Earth Day**
- 9. NEGOTIATIONS: E.U. plans \$2.7B in loans for climate response**
- 10. NEGOTIATIONS: 'Peoples conference' opens with chants of 'planet or death'**
- 11. RENEWABLE ENERGY: Spain may scale back solar incentives**
- 12. ENERGY EFFICIENCY: Greenpeace dislikes Facebook's data center**

**E&ETV's OnPoint**

- 13. LEGISLATION: Sacramento Municipal Utility's Brinton weighs in on allocations debate**